CORRESPONDENCE.

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To the Virginia Law Register:

In answer to your request to give you my views on the question of our relations to Great Britain, arising out of the contest between Great Britain and Venezuela as to boundary, my compliance is made with diffidence, yet from a sense of duty to say what may in any degree aid in avoiding war, consistently with honor to the country.

Grotius says: "War is not among the arts; and indeed the thing is so terrible that nothing can make it right but extreme necessity or true love." "*Justum bellum quibus necessarium, et pia arma quibus nulla nisi in armis relinquitur spes.*" If essential right by undoubted title be denied, and the enemy persistently refuses peaceable adjustment, war is the dreadful alternative; for submission to wrong by a wilful foe may furnish precedent for violation of all right. National honor must be maintained; that is, such a national character as shall convince all nations that, while we will only claim what is right, we will from fear submit to no wrong. Such character is the guaranty of safety and of peace.

While, therefore, we should not "stir without great argument," we may "greatly find quarrel in a straw, when honor's at the stake."

In this view, the question of the value of the territory in dispute is unimportant, if some essential principle or right be involved, to yield which to unrighteous demand would open the door to surrender of all.

Venezuela is an American country, and it is said that by menace and violence Great Britain has encroached, and is encroaching, upon her territory, contrary to the Monroe doctrine, promulgated just seventy-two years ago.

This doctrine contains three points:

1st. "That we should consider any attempt on their part (of the allied powers) to extend their system to any part of this hemisphere as dangerous to our peace and safety."

2d. "That we could not view any interposition for the purpose of oppressing (governments on this side of the Atlantic whose independence we had acknowledged) or controlling in any manner their destinies by any European power, in any other light than as a manifestation of an unfriendly disposition towards the United States."

3d. "The occasion has been judged proper for asserting as a principle, in which the rights and interests of the United States are involved, that the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European power."

But the question is made, "Are these declarations principles of international law?" This is denied, because all nations have not accepted them, nor has Great Britain.

But this, if true, is not conclusive. Whatever is necessary for self-defence against the positive injurious action of another nation we may do. Self-defence is the first and inalienable law of nations. It is the *Jus*, the Divine Law, which becomes *Lex*, the law by *consensus* of nations, when they agree to it. But their refusal to agree cannot take away the right.

Lord Stowell says: "The law of nations is the law of God, plus positive compact or convention." *The Helena*, 4 Rob. 7. In accord, Chief Justice Marshall says: "The law of nations is in part unwritten, and in part conventional. To ascertain that which is unwritten, we resort to the great principles of reason and justice."

The Monroe doctrine, therefore, was the expression of *Jus*—the fundamental law of nations, binding on all, though not consented to. Can the wrong-doer plead his non-responsibility for the violation of right, because he never acknowledged it? How are nations outside of Christendom, which know no international law, to be dealt with? Clearly by the fundamental law of right. 1 Phillimore, International Law, 22 *et seq.*

The Monroe doctrine was the application of the law of self-defence to the crisis then existing. It was no new law, but the application of an *old law* to a *new case.*

It had a precedent in the Treaty of Utrecht (1713) in which England and other nations made peace with France, only on condition that France and Spain should never be united. In this treaty, the words were first used which have been so celebrated: "*Ad conservandum equilibrium in Europa.*" The other powers compelled France to yield to this decree of eternal divorce from Spain. There was no pre-existing law for this special provision, but it was the application of a sound principle involving the right of self-defence on the part of the other nations, enforced on France against her will.

It was self-defence, not against impending wrong, but self-defence by forbidding a dangerous combination of two nations which made future wrong probable.

We may defend for a present aggression, and against any combination of two or more powers, or any act by one, which may make future aggression more dangerous to our safety.

The whole of Europe to-day is under this general law of self-defence, by the "balance of power" principle.

The Monroe doctrine is the application of this "balance of power" principle on this continent. To allow the combination of an old and powerful nation of Europe with an American dependency or colony is to transfer Europe to America as a possible danger to the United States. It disturbs the equilibrium in America.

The Monroe doctrine did not decree the divorce of pre-existing relations between Europe and American colonies, but forbade the bans of any future marriage between them.

What an absurdity it would be to ask for a law by the *consensus* of Europe to justify our denial to Great Britain and France to take Cuba! Spain held Cuba before our independence. Therefore the Monroe doctrine does not apply to Spain. Besides, we can meet her power without fear. But can Spain be allowed to transfer Havana to Great Britain, on which, as a fulcrum, the long-arm lever of her naval power could upheave the integrity of our Union, and which would give the key to our Gulf commerce, interstate and foreign, into the hand of an alien who

might become our mortal foe? Clearly not. We exercise the common law of self-defence in resisting the possibility of such a result in any future conflict. This is the original *Jus*—a fundamental right—and not a conventional right.

I need not illustrate farther. I believe in and teach the Monroe doctrine in all its parts, not qualified by the views of Mr. Calhoun in his speech on Yucatan, so much relied on by President Woolsey. With all my reverence for Calhoun's genius and character, I cannot agree with him. But even he cited Cuba as a proper case for its application, not as a canon of international law by the consensus of nations, but by the unwritten and fundamental law of self-defence.

The general principle must be held to exclude all European colonization, lest in allowing any we admit a condition which hereafter might be irretrievably disastrous. We may waive the enforcement of the rule, where no evil can ensue, of which we alone must finally decide.

Therefore, when the Panama Congress was proposed in 1826, Mr. Buchanan's resolution passed the House of Representatives, which must be held so to qualify the Monroe doctrine as to make it a matter for the decision of the people of the United States at every period when the operation of the doctrine is invoked.

After declining to be represented in the Congress, and declaring that the United States should not form alliances with all or any of the South American Republics, it proceeds: "Nor ought they to become parties with them or either of them to any joint declaration for the purpose of preventing the interference of any European powers with their independence or form of government, or to any compact for the purpose of preventing colonization upon the continents of America; *but that the people of the United States should be left free to act in any crisis in such manner as their feelings of friendship towards those Republics, and as their own honor and policy, may at the time dictate.*"

But in effect Great Britain inspired and sanctioned the first two rules of the Monroe doctrine. This arose thus: The Holy Alliance assumed sovereignty over Europe to protect monarchy against free institutions in every country of the continent. It helped France to put down rebellion in Spain and to restore the Spanish monarchy. This intimate alliance between France and Spain was against the principles of the treaty of Utrecht, that France and Spain, in order to the safety of Europe, should never unite. It also proposed to interfere with the internal constitutions of the European States according to the views of the Alliance.

Mr. Canning, the British minister of foreign affairs, was alarmed. He sounded the American minister, Mr. Rush, as to declaring against any interference by Europe with Spanish America, and intimated that, if the United States made such declaration, England would back them. Rush conveyed Canning's suggestion to President Monroe. The Monroe doctrine was the result.

The three branches of this declaration were contained in the same message. Canning, Brougham, Mackintosh and all England were enthusiastic in praise of the bold manifesto of Monroe, and rejoiced to claim kinship with their American brethren, as worthy scions of the same great race.

I am not aware of any protest against the Monroe rule as to colonization, though Mr. Canning's biographer says that he did not approve of that rule; but he did approve heartily of the other two. So that it appears that England inspired and sanctioned the Monroe manifesto, and did not officially dissent from any part of it.

It is pleasant to note that Lord Salisbury, in his dispatch, does not repudiate, but concedes in substance, the Monroe doctrine as to colonization. This is one of the incidents of this trouble that is valuable. The Prime Minister admits its rightfulness. How could he deny it, when all Europe, England included, insist to-day upon the principles of the balance of power which are applied to America by the Monroe doctrine.

Mr. Jefferson, in his letter to Monroe, October 24th, 1823, advising with him on this subject, states the question with his usual felicity: "Our first and fundamental maxim should be, never to entangle ourselves in the broils of Europe. Our second, never to suffer Europe to intermeddle with cis-Atlantic affairs."

The question now comes up: "Does Great Britain design to violate the Monroe doctrine in the matter of her boundary with Venezuela?" Her Prime Minister in effect says she does not. She proposes to settle the boundary and to take what she is entitled to under the Dutch cession of 1796.

Does a settlement of boundary line *bona fide* made, though Great Britain gets more than Venezuela admits, or than the United States would admit, amount to a *new* colonization? If made *mala fide*, and if under cover of settling a boundary, Great Britain should grasp more than she is properly entitled to, it might be so regarded.

But that a settlement of boundary line between Great Britain and Venezuela made *bona fide* does not substantially conflict with the Monroe doctrine, would seem to be settled by the United States having twice permitted this by treaty. By the Ashburton Treaty of 1842, a part of the territory of Maine was ceded by the United States to Great Britain, with the consent of Maine. In the great Oregon contest, where we claimed up to the parallel of "54° 40′ or fight," we yielded, by accepting the parallel of 49° as the boundary, 5° 40′ of our claim of territory to the colonizing power of Great Britain. These cases were, under the terms of the Buchanan resolution, as our honor and policy at the time dictated.

If Great Britain, therefore, be willing to settle with Venezuela *bona fide*, the Monroe doctrine is not violated.

The President states very properly, that "any adjustment of the boundary which that country (Venezuela) may deem for her advantage and may enter into of her own free will, cannot of course be objected to by the United States."

But it is insisted, if this cannot be done, Great Britain should submit the question to arbitration. That is a very fair suggestion. But who shall be the arbitrators? The United States prefer they should be American. Great Britain prefers a larger range for selection.

It cannot be held that the United States have the right either to dictate to Great Britain the arbitrators, or their character; and then make it a *casus belli* if Great Britain does not yield to the dictation. The United States would not yield in like case. Why insist that Great Britain should do what they would refuse?

In Lord Salisbury's dispatch of November 26th, 1895, he gives his reasons for not submitting to the arbitration suggested, and to an arbitration of the whole question of boundary, without the exception of so much as Great Britain holds is not a matter of real dispute. But he declares that Great Britain is anxious fairly to deal with Venezuela, and in good faith to settle the boundary.

But the President says, the grounds assigned by Great Britain for not submitting to the arbitation seem to him "far from satisfactory." That may be;

but does this difference of opinion, in which the truth of her assertions and the sincerity of her motives are questioned by the President, justify the United States in enforcing their opinion by war? Clearly not. But the President says, it leaves but one thing to be done, because all else would be "supine submission to wrong and injustice."

Another resort might be had, and that is mediation; but a mediator must not be in any sense a party to the contest, or must divest himself of all interest before he can be a proper mediator.

The President does not propose mediation, but he declares that the only thing that remains to be done is to determine the divisional line by a commission selected by the United States; and to do so without any representative of either of the nations involved in the dispute on that commission. He goes further; he holds when the commission so appointed makes a report, which is accepted, and Great Britain does not yield its claims to the divisional line so determined, "it will be the duty of the United States to resist, by every means in its power, as a willful aggression upon its rights and interests, the appropriation by Great Britain of any lands, or the exercise of governmental jurisdiction over any territory, which, after investigation, we have determined belongs of right to Venezuela."

The commission is well enough, in order that the United States may be informed satisfactorily upon the points in issue; but the commission is to decide without hearing either party to the dispute. It is not probable that Great Britain would appear before this commission so constituted and plead the merits of her case. But no opportunity is given for this. The commission is to act for the United States, and not even to arbitrate the disputed question between the parties. This is not even suggested. It might have been proposed to Great Britain to arbitrate the question before this commission, but no such opportunity is even offered.

In effect, therefore, the proposition is, that if this *ex parte* commission makes its decision, the refusal of Great Britain to submit to it is *casus belli*. This seems to me to be without precedent in modern international procedure.

It will be observed that nothing is said as to Venezuela and any action on her part contrary to the commission's divisional line. This gives the appearance, that the commission is to act so as to control Great Britain, but not Venezuela; as if the United States were assuming the cause of Venezuela as their ward against her opponent. This would exclude the idea of impartiality between the parties by the action of the commission.

It involves further, that the United States thus entangles our country by a *quasi* protectorate alliance with all other countries on the American Continent; that the United States as "practical sovereign on this Continent * * whose fiat is law upon the subjects to which it confines its interposition;" as "master of the situation and practically invulnerable as against any and all other powers," as Lord paramount to these her vassals and her wards, take upon themselves the jurisdiction to decide upon a case, without a fair hearing by the parties, and upon their decision to stake the peace of this country and the happiness and prosperity of her people.

War on such an issue is not necessary. The Monroe doctrine is not left without hope, though Great Britain does not yield to the decision of the commission, which decides without giving her a hearing.

The Monroe doctrine has been vindicated with ability by the Secretary and the President, and has been conceded by Great Britain.

The error, I respectfully suggest, is not in all this, but in the issue which has been made, and in the mode in which it has been done.

War may be provoked because of this issue, when all the principles involved may be securely maintained by other and peaceable means.

I recognize, and accord with, the patriotic impulses of the President and of Congress, but I am constrained to say, that the United States have no just ground to present such an issue and in so menacing a form to Great Britain, when they would resent it if presented by Great Britain to themselves.

May the influences of this Season and the doctrines of the Divine Man whose advent it recalls, come down upon the rising waves of angry international contention on both sides of the Atlantic, and speak the words: "Peace, be still!"

J. RANDOLPH TUCKER.

WASHINGTON AND LEE UNIVERSITY, Dec. 25, 1895.